

Review Article

ISSUES OF PROVIDING GUARANTEES AND SOCIAL PROTECTION FOR EAEU LABOUR MIGRANTS

Mereke Zhurunova

ABSTRACT

Background: Today, the Eurasian Economic Union (hereinafter the EAEU) has formed its own labour market; however, in the current international environment, issues related to ensuring the health protection of migrants and their access to employment persist. Despite ongoing efforts within the EAEU to develop and deepen Eurasian integration and improve the regulatory framework, there is a need in the age of digitalisation to develop better access for workers to social protection and medical support systems.

The relevance of this scientific article lies in the presence of problematic issues related to the fact that many migrants are not registered and lack the documentation to protect them legally and financially; this situation contributes to the development of informal employment and low labour productivity. Although the EAEU countries have established working and socio-economic conditions, the issue of ensuring health protection, access to work, and social protection for labour migrants remains unsolved.

Methods: This article employs various methods of scientific cognition, including historical and legal analysis, comparative legal study, induction and deduction, as well as analysis and synthesis. It also applies the acts and regulations of the ILO.

What is the role of protecting the socio-economic and labour rights of migrant workers as the main task of receiving states?

In law enforcement practice, to what extent do the provisions of international agreements on the organised hiring of workers between receiving countries and countries of origin of migrants ensure the adaptation of migrants to the legal regime of the host country, the participation of migrants in the functioning of civil society institutions, and the monitoring of migration processes?

How does national regulation of labour migration in integration associations of states rationally organise their actions on the principles of national treatment for migrant workers?

Labour migration strengthens integration unions, creating strong social ties and developing civil society institutions within the boundaries of integration associations. Since state sovereignty is inextricably linked to the protection of the interests of fellow citizens in regulating labour migration, all states participating in regional integration are called upon not only to protect the rights of migrant workers but also to provide all conditions for migrants to fulfil their obligations to civil society.

The study examined the free movement and provision of labour and social guarantees for labour migrants in the EAEU and compared their situation in the EU. It also surveyed labour migrants in the EAEU by questioning workers in education, medical care, and various private sectors. This article is based on the results of this study.

This article examined the challenges in providing guarantees and social protection for EAEU labour migrants. It proposed improvements to legal regulatory mechanisms and outlined recommendations for improving and expanding opportunities for free movement while better safeguarding the social and labour rights of migrants in the EAEU. The study's primary objectives were as follows:

- Examining the provisions of the ILO Convention on migrant workers.
- Collecting and analysing data on labour movement across the EAEU
- Analysing international EU treaties regarding the legal status of migrant workers
- Interviewing migrant workers in the EAEU on issues related to their provision of rights and guarantees under the EAEU Treaty.

Results and conclusions: *This study highlights the need to organise safe labour migration, provide labour migrants with full access to digital services, improve the system of vocational and technical education in line with labour market demands, as well as develop and implement a unified system for ensuring the safety of workers and their families. Successful adaptation in the host country is identified as a critical factor for both labour migrants and their families. The authors recommend adding a dedicated chapter to the EAEU treaty that would comprehensively address labour and social rights, along with their guarantees.*

1 INTRODUCTION

The history of the EAEU creation began with the signing of the EAEU Treaty in 2014, which came into force on 1 January 2015. Many problems labour migrants previously faced within the Customs Union and the Common Economic Space were settled by the EAEU Treaty.¹

Economic integration in the EAEU is based on creating a single labour market, which should guarantee freedom of movement of labour migrants within the Union member states.

1 Treaty on the Eurasian Economic Union of 29 May 2014 (amended 7 June 2024) (EAEU Treaty) <https://online.zakon.kz/document/?doc_id=31565247> accessed 11 May 2024.

At the same time, it is worth noting that unhindered free movement was previously ensured under the framework of the Agreement between the Government of the Republic of Belarus (hereinafter: RB), the Government of the Republic of Kazakhstan (hereinafter: RK), the Government of the Kyrgyz Republic (hereinafter: KR), the Government of the Russian Federation (hereinafter: RF) and the Government of the Republic of Tajikistan (hereinafter: RT) on mutual visa-free travel of citizens dated 30 November 2000.² In other words, this agreement on free movement was in force before the creation of the EAEU. Following the establishment of the EAEU, citizens of the Republic of Armenia (hereinafter: RA) also gained the right to free movement within the EAEU.

One of the goals of the EAEU Treaty is the desire to create a market for simple goods, services, capital, and labour resources within the EAEU. The sphere of labour is an important and multifaceted area of society's economic and social life, covering both the labour market and its direct use in social production.

The purpose of creating a common integration space was to promote the socio-economic development of the EAEU member states. One of the priority areas of economic development is the labour movement. Therefore, it should be valued higher and regulated within the framework of law to create reasonable working conditions.

Since labour migration is an essential component of the economic development of states and a resource for regional integration, Deputy Director General of the International Organization for Migration (IOM) Laura Thompson, in her article "Protection of Migrants' Rights and State Sovereignty", notes that protecting migrants' rights can be an effective method to strengthen state sovereignty.³ Each state focuses its legislative efforts on improving and developing laws to protect the rights of migrants while also working to strengthen its economy and resolve issues like corruption and organised crime. These challenges are often associated with violations affecting the most vulnerable segments of the population.

The international labour migration regime is defined by acts of the United Nations (UN), the International Organization for Migration (IOM), and the International Labour Organization (ILO). The most significant international acts in the field of labour migration are:

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990;⁴

2 Resolution of the Government of the Republic of Kazakhstan no 1772 of 29 November 2000 'On the conclusion of an Agreement between the Government of the Republic of Belarus, the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic, the Government of the Russian Federation and the Government of the Republic of Tajikistan on mutual visa-free travel of citizens' <http://adilet.zan.kz/rus/docs/P000001772_> accessed 11 May 2024.

3 Laura Thompson, 'Protection of Migrants' Rights and State Sovereignty' (2013) 50(3) UN Chronicle 8, doi:10.18356/57e51f0e-en.

4 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (adopted 18 December 1990 UNGA Res 45/158) <<https://adilet.zan.kz/eng/docs/O9000000002>> accessed 11 May 2024.

- ILO Convention No 97 "On Migrant Workers";⁵
- ILO Convention No 143 Convention on Abuses in the Field of Migration and on Ensuring Equal Opportunities and Treatment for Migrant Workers 1975;⁶
- Recommendation No 169 on employment policy.⁷

The EAEU Treaty acknowledges the need to coordinate “policies in the field of regulation of labour migration within the Union” (Article 96) and also guarantees workers “the right to engage in professional activities in accordance with the speciality and qualifications specified in the education documents ...” (Article 98). It is noteworthy that EAEU documents do not establish a national regime for citizens of member states, as this is recognised by acts of primary EU law.⁸

2 DISCUSSION

Migration is generally characterised by economic determinants, such as income levels, social conditions, and the success of compatriots in destination countries. However, labour migration is not only driven by economic or social determinants; the influence of the political environment in the destination countries is essential for the intensity of migration flows.

2.1. General State of Eurasian Integration in The Labour Sphere

Currently, there is a growing scientific debate regarding the establishment and rapid development of legal regulation within the EAEU. The EAEU provides close cooperation among member states in the development of labour migration and social protection of workers. As the EAEU approaches its tenth anniversary in 2025, it can be noted that significant progress has been made since its inception, particularly in maintaining stability under difficult conditions and improving the socio-economic conditions of migrant workers.

5 ILO Convention no 97 Concerning Migration for Employment (revised 8 June 1949) <https://ilo.primo.exlibrisgroup.com/discovery/delivery/41ILO_INST:41ILO_V2/1246487300002676> accessed 11 May 2024.

6 ILO Convention no 143 Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (adopted 24 June 1975) <<https://webapps.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO>> accessed 11 May 2024.

7 ILO Recommendation no 169 Concerning Employment Policy (Supplementary Provisions) (adopted 26 June 1984) <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312507> accessed 11 May 2024.

8 Article 3 of the Treaty on European Union (TEU), and Articles 9, 10, 19, 45–48, 145–161 of the Treaty on the Functioning of the European Union (TFEU). See: Consolidated versions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C 202/13, 47 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT#d1e32-13-1>> accessed 11 May 2024.

Firstly, we can note the conclusion of an agreement on pension provision for EAEU workers, developed by the Eurasian Economic Commission (hereinafter: the EEC),⁹ together with the EAEU states. This agreement enabled the provision and implementation of pension rights for workers under the same conditions as citizens of employment states.

The experience gained through EAEU relations is invaluable, especially in regulating labour relations, including pension payments and social protection registration.

Secondly, it's well known that the COVID-19 pandemic has accelerated the transformation processes in the labour market through the wide use of digital technologies. In this regard, since 2021, the "Unified search system "Work without borders" was introduced in the EAEU countries, which became the first joint digital project in the Eurasian space.

Has the electronic labour exchange become an effective tool to promote employment? Statistics from the website "enbek.kz" reveal that over 330,000 unemployed individuals have found suitable vacancies through this electronic platform. Of these, more than half secured permanent jobs, while 143,000 found temporary jobs during challenging periods. There are currently 643,000 requests on this platform from more than 171,000 users.¹⁰

According to EEC statistics, the number of unemployed people registered at employment services in the EAEU member states reached 813.8 thousand people by the end of May 2024, representing 13,8 % of the labour force. This figure is lower than in May 2023. Specifically, unemployment in the Russian Federation increased by 2.8% times, in the Republic of Kazakhstan by 4,7%, in the Republic of Armenia by 15,5%, and in Kyrgyzstan by 4.9%. Meanwhile, unemployment in the Republic of Belarus decreased by 3.3%, which Prime Minister R. Golovchenko attributes to the stable work of the real sector.¹¹

Within the EAEU, today, more than 500,000 vacancies and more than 2 million resumes have been entered into the international system of job search and recruitment in the territory of EAEU countries: RA, RB, RK, KR and RF, which indicates the demand of this direction.¹²

9 'The Agreement on Pension Provision for Workers of the EAEU Countries has Entered into Force' (*Eurasian Economic Commission*, 12 January 2021) <<http://www.eurasiancommission.org/ru/nae/news/Pages/12-01-2021-01.aspx>> accessed 11 May 2024.

10 'In the EAEU, the Task of Ensuring the Freedom of Movement of Labour has Been Largely Solved' (*Eurasian Economic Commission*, 28 November 2023) <<https://eec.eaeunion.org/news/v-eaes-zadacha-obespecheniya-svobody-peredvizheniya-rabochey-silyi-reshena-v-znachitelnoy-stepeni/>> accessed 11 May 2024.

11 The number of unemployed in the EAEU decreased by 13.8% <<https://eec.eaeunion.org/news/chislnost-bezrabotnykh-v-eaes-sokratilas-na-13-8/>> accessed 11 July 2024.

12 *Work Without Borders: International System for Job Search and Recruitment in the Territory of the EAEU Countries: Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia* <<https://gsz.gov.by/front-rbg/>> accessed 11 May 2024.

According to A. Kishkembayev, it is necessary to continue development so that employees can receive all the advantages and benefits within the framework of economic integration:

“Today we are faced with the task of further development of a single labour market, which requires development of proposals to deepen cooperation between the Union member states in the field of regulation labour migration.”¹³

Regarding world practice on the interconnection of States, the General Agreement of the World Trade Organization on Trade in Services (GATS),¹⁴ which includes an Annex on the Movement of Individuals, contains few obligations that would require States to change their existing policies and formally exclude immigration from its scope. However, the discussion of the relationship is dictated by the fact that the liberalisation of migration, even on a relatively small scale, can significantly increase global well-being, exceeding the growth in global well-being that would be achieved as a result of the full liberalisation of trade in goods and services.

This increase in well-being is due to the significant increase in productivity achieved by migrants moving from developing to developed countries, as evidenced by the significant wage gap between these regions. Migrants seek opportunities in developed countries to significantly increase their productivity and, consequently, their income for purchasing power.¹⁵

An empirical study of the labour market in the Republic of Kazakhstan showed that EAEU migrants often possess high levels of specialisation in the fields of health, education and services. This expertise naturally benefits not only the migrant workers themselves but also the economies of the host countries. The analysis also showed that the possibility of free movement within the EAEU has enabled these migrants to find good job opportunities and the possibility to settle in the host country permanently. From official sources, it can be concluded that, in general, the donor states of the EAEU are the Kyrgyz Republic, while the Republic of Kazakhstan and the Russian Federation are the primary recipient states.¹⁶

Examining the experience of foreign countries in this aspect reveals that often, the indigenous population benefits from migration since migrants offer quite different

13 ‘Fundamentals of Labour Legislation of the EAEU Member States Will Additionally Protect the Labour Rights and Interests of Workers in the Union Countries’ (*Eurasian Economic Commission*, 14 September 2017) <<https://pravo.by/novosti/obshchestvenno-politicheskie-i-v-oblasti-prava/2017-september/25573/>> accessed 11 May 2024.

14 General Agreement on Trade in Services (GATS) <https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm> accessed 11 May 2024.

15 Joel P Trachtman, ‘Is Migration a Coherent Field of International Law? The Example of Labour Migration’ (2017) 111 *AJIL Unbound* 481, doi:10.1017/aju.2018.1.

16 ‘Information on the number of citizens of the member States of the Eurasian Economic Union who entered the country (Republic of Armenia, Republic of Belarus, Republic of Kazakhstan, Kyrgyz Republic, Russian Federation) for employment in 2023’ (*Eurasian Economic Commission*, 2024) <https://eec.eaeunion.org/upload/medialibrary/a62/47ntgmtqyfcumatqynsuboxvnipttze/Svedeniya-o-chislennosti-trudyashchikhsya-za-2012_2023.pdf> accessed 11 May 2024.

production resources, such as unskilled labour. However, this observation is becoming increasingly controversial in the United States due to the declining earnings of low-skilled workers of local origin. Over time, the diversity of sources of migration to the West has also expanded the human capital of migrants, making the observation of the "absence of significant" income differences less clear, especially due to self-selection and other unobservable characteristics.

Thus, the impact of immigration on economic growth depends on the level of qualifications. More educated and skilled immigrants generally have a positive impact on economic growth. Since the benefits of migration depend on the ability to use migrants' skills, the World Bank (2023) advocates for matching migrants' skills to the needs and obligations of the host country as a strategy to optimise benefits for both sides of the migration equation.¹⁷

Based on the above, in the age of digitalisation development within the EAEU, migrant workers still need to be provided with flexible access to digital services. This applies not only to the employment platform "Work without Borders" but also to the registration of children in schools, preschool institutions and medical institutions. In this regard, workers in shadow employment are the most vulnerable, and it is more difficult for them to receive such assistance. Therefore, we think that labour migrants in the EAEU can receive public online services without barriers, and, in this regard, it is worth strengthening legislative norms at the national level.

With the development of digitalisation, there is not only the growth of online services but also the use of chatbots and robots, which in turn can compete with migrant workers. This shift has increased the demand for specialists with high digital skills in the international labour market. European countries and China are already incorporating artificial intelligence, which in 2030, according to forecasts, indicates the need for workers to learn new professions related to digital technologies.¹⁸

The development of new educational programs and the legislative regulation of digital systems are relevant for the EAEU countries. In this regard, we consider it necessary to consider the issues of harmonisation of labour laws of the EAEU countries to effectively regulate labour relations in the era of artificial intelligence.

According to scientist M. Kh. Khasenov, the primary task in forming the Eurasian labour market is to correct the current situation by harmonising labour legislation among the EAEU countries.¹⁹

17 Udaya R Wagle, 'Labour Migration, Remittances, and the Economy in the Gulf Cooperation Council Region' (2024) 12(1) Comparative Migration Studies 30, doi:10.1186/s40878-024-00390-3.

18 Alexandra Molchanovskaya and others, *The Labour Market Kazakhstan 2022: On the Way to Digital Reality* (Labour Resources Development Center 2022).

19 Muslim Kh Khasenov, 'Grounds and Procedure for Termination of an Employment Contract on the Employer's Initiative in the Member States of the Eurasian Economic Union in the Context of International Labour Standards' (2022) 18(3) Journal of Foreign Legislation and Comparative Law 83, doi:10.12737/jflcl.2022.038.

International legal obligations allow States, through mutual concessions during negotiations and through the exchange or pooling of powers provided for by international law, to achieve such a state of affairs to the maximum extent possible. States have adopted international legal norms that can mobilise additional constituencies and contribute to creating new political coalitions. Without such reciprocity, migration liberalisation is unlikely to be sufficiently implemented, and global well-being will be suboptimal.

Harmonisation of labour legislation is considered favourable for the creation of socio-economic conditions for migrant workers in the EAEU in the event of ratification of the ILO Convention on the Integration and Protection of the Rights of Migrant Workers.

We believe this approach makes it possible to use the term "migrant worker" in the EAEU treaty to consolidate the legal status of migrant workers and their family members and further use this term in the national legislation of the five EAEU countries when regulating issues of external labour migration.

2.2. Analysis of the Advanced Practice of The European Union

Having considered promising directions and significant achievements in labour migration since the establishment of the EAEU, as well as discussing issues of Eurasian integration, the second direction of analysis turns to international norms and practices within the EU to identify best practices that could be applied in the EAEU. While labour migration issues in the EAEU are not so large-scale and complex as those in the EU, the EU's practice in this area remains relevant and should not be overlooked.

According to historical data, it is generally accepted that the legal basis for the free movement of persons in the EU has existed since 1957.²⁰

Key legal acts of international cooperation for EU citizens include the following agreements:

1. The Maastricht Treaty, concluded in 1992, introduced the idea of EU citizenship and its accessibility to every citizen of its member states, thereby guaranteeing the freedom of movement of EU citizens and guests of the country.²¹
2. The Amsterdam Treaty of 1997 granted every EU citizen the right to travel, work and live in an EU country without special formalities. This facilitated

20 Kubatbek Rakhimov and Akbermet Azizova, 'Comparative Analysis of the EAEU and the EU Common Labour Markets' (2022) 22(1) *Vestnik RUDN, International Relations* 94, doi:10.22363/2313-0660-2022-22-1-94-110.

21 TEU (n 8); Will Kenton, 'Maastricht Treaty: Definition, Purpose, History, and Significance', *Investopedia* (New York, 31 July 2024) <<https://www.investopedia.com/terms/m/maastricht-treaty.asp>> accessed 11 May 2024.

unhindered access to employment, education, residence and retirement regulation in other member states.²²

3. The Treaties on the European Union and the Functioning of the European Union provide EU citizens with various social, cultural and economic benefits. Host countries, without discriminatory actions, provide migrant workers with the same rights as their citizens to use social and tax benefits and access to housing, and their family members have the right to access educational and professional institutions.²³

Thus, the free movement of workers has become a crucial principle of the single European labour market. To consolidate the rights of migrant workers, the EAEU adopted the Agreement on the Legal Status of Migrant Workers and Members of Their Families, dated 8 October 2010 (hereinafter: the Agreement).²⁴

There is no separate agreement on migrant workers in EU law, but Council Regulation (EEC) No. 1612/68 of 15 October 1968, "On Freedom of Movement for Workers within the Community," is in force.²⁵ Article 5 of this Regulation provides migrant workers the right to work on an equal basis with citizens within the EU. Meanwhile, Article 6 of the Agreement provides for the possibility for Member States to impose restrictions on the employment of migrants for national security purposes and lists a number of restrictions.

Unlike the EAEU, EU regulations do not specify the period of stay on the state's territory, nor do they require registration and the obtaining of a migrant certificate.

Article 15 of the EU regulations states, "Migrants have the right to receive advisory assistance through specialised bodies, information bureaus, employers and government agencies." In contrast, Article 9 of the Agreement stipulates that information can be obtained from employers and authorised bodies, but it does not provide for additional information bureaus.

Furthermore, Article 25 of the EU regulation provides housing for migrants and their families, while Article 13 guarantees the right to medical services, with children having the right to attend preschool institutions.

22 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts of 02 October 1997 [1997] OJ C 340/1 <<http://data.europa.eu/eli/treaty/ams/sign>> accessed 11 May 2024; 'Treaty of Amsterdam', *Wikipedia* (Wikimedia Foundation, 6 April 2024) <https://en.wikipedia.org/wiki/Treaty_of_Amsterdam> accessed 11 May 2024.

23 'Law EU' (*European Union*, 2024) <https://european-union.europa.eu/institutions-law-budget/law_en> accessed 11 May 2024.

24 Resolution of the Government of the Republic of Kazakhstan no 1044 of 8 October 2010 'On signing an Agreement on the legal Status of Migrant Workers and members of Their Families' <https://adilet.zan.kz/rus/docs/P100001044_> accessed 11 May 2024.

25 Regulation (EEC) no 1612/68 of the Council of 15 October 1968 on Freedom of Movement for Workers Within the Community [1968] OJ L 257/2 <<http://data.europa.eu/eli/reg/1968/1612/oj>> accessed 11 May 2024.

S.Yu. Golovina and N.L. Lyutov have observed that while integration into the EU has already impacted the national labour law systems of its member states, the future impact of the EAEU can only be speculated. Examining how the EU affected Eastern European states transitioning from a planned economy to a market economy, it can be concluded there are some similar changes in the system of legal regulation of labour.²⁶

It is also worth noting that the EU has a significant document – the Charter of Fundamental Rights of the European Union of 7 December 2000 – the most recent in the past millennium, but a highly significant “bill of rights”.²⁷ The Charter of the European Union consolidates all personal, political and socio-economic rights and recognises them all as fundamental. Although social rights are largely programmatic in nature, they are no longer considered secondary.

The Charter of Human Rights is associated with most UN human rights conventions, with relevant supervisory bodies, including committees on:

- Human Rights;
- Economic, Social and Cultural rights;
- Elimination of All Forms of Discrimination;
- The Rights of the Child;
- Protecting the Rights of All Migrant Workers.

In times of economic and social crisis, the Charter becomes increasingly important to ensure the fundamental rights of people in Europe.

The most effective protection of workers' rights in the EU can be seen from the law enforcement practice in the “Viking” and “Laval” cases, where trade unions demonstrated their strength.²⁸

Based on the above, we believe that the protection of workers' rights by trade unions within the framework of the EAEU will contribute to the protection of migrant workers' rights by providing them with guarantees of decent work and social protection.

2.3. Formal Legal and Empirical Analysis of The Application of The EAEU Treaty Norms

Based on the results of the previous two directions of work of the EAEU, we will move on to the third direction: studying the application of certain norms contained in the EAEU treaty, as well as studying and analyzing statistical data of persons who arrived in the

26 Nikita Lyutov and Svetlana Golovina, ‘Development of Labour Law in the EU and EAEU: How Comparable?’ (2018) 6(2) Russian Law Journal 93.

27 Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3AC2012%2F326%2F02>> accessed 11 May 2024.

28 Nikita Lyutov, ‘Conflict between the Fundamental Rights of Employees and Entrepreneurs in the Practice of the European Court of Justice’ (2008) 12 Labour Law 70.

country to obtain information on labour migrants and their families, and conducting social surveys on the protection of labour migrants' rights and social security.

As we have already noted, the main EAEU direction within the framework of the Treaty is to ensure four directions: the movement of goods, services, capital and labour. To implement a unified policy in the field of labour movement, the migration and labour legislation of the EAEU member states was adjusted. This has led to some innovations in the migration sphere. For example, under the EAEU treaty, EAEU citizens can engage in labour activities in two ways: by concluding a civil law or an employment contract. These provisions are reflected in Article 96 of the Treaty.²⁹

Both contracts, despite their diversified nature, have similarities from the root of the word "contract," which implies obligation and performance. The conclusion of a civil contract is less costly and profitable for the employer for the following reasons: it does not require payment for vacations, for the absence of an employee due to temporary disability, or other guarantees and compensation payments. In other words, by concluding a civil law contract, the employer is exempt from providing a social package.

Thus, the EAEU treaty provides an opportunity for an employee to choose to work under an employment or civil law contract, thereby giving migrant workers more opportunities to work freely in the host country.

The next change is the removal of restrictions on admission to the general labour market. Quotas and permits of authorised bodies have been cancelled. The EAEU treaty and its accompanying documents provide benefits for employment within the EAEU member states in the form of the following norms:

1. The EAEU Citizens can engage in labour activities within the EAEU without the permission of the authorised body and stay in the country without registration for 30 days; this norm also applies to their family members. Upon expiration of this period, they must register for the period determined by the service agreement or employment contract. It should be noted that there is no specific prohibition if a citizen registers in one region but works in another region. International practice also supports such a practice. There is no prohibition on movement within the Union.³⁰

Also, Paragraph 9 of Article 97 states that if a citizen's service or employment contract has expired, they must renew it within 15 days. Otherwise, they will have to leave the country. This indicates the presence of restrictions on the free movement of labour in the framework to protect the national market.

29 EAEU Treaty (n 1) art 96.

30 Regulation (EEC) no 1612/68 (n 25).

2. In accordance with Paragraph 3 of Article 97 of the EAEU Treaty, there is a norm on recognition of diplomas and qualifications without passing nostrification, except for legal, medical, pedagogical and pharmaceutical education.³¹ By restricting access to the work of specialists in this field, we believe that within the EAEU, the doors are closing to these specialists, who are in demand in the labour market.

The situation is related to the fact that, in practice, there is considerable discussion about the possibility of recognising academic degrees in the EAEU. Currently, to recognise academic degrees in the country of employment, it is necessary to undergo the procedure of nostrification (recognition), which varies in complexity and duration among the EAEU countries. Thus, a barrier exists to the movement of highly qualified scientists within the EAEU.

As Minister of Economy and Financial Policy of the EEC R. Beketayev notes: “The Agreement provides for mutual direct recognition of documents on academic degrees of workers issued in member states for professional activities.”³² However, this means that specialists with an academic degree in fields such as law, medicine, pedagogy and pharmacy face restrictions on their ability to engage in employment.

A separate issue is the recognition of the PhD degree in Kazakhstan. Currently, recognition of an academic degree within the EAEU does not extend to specialists holding a Doctor PhD degree. This problem not only prevents Kazakhstani PhD doctors from working freely within the EAEU but also reduces the appeal of studying in Kazakhstan for international students pursuing PhD programs. Therefore, we advocate for the re-evaluation of the PhD degree status in Kazakhstan to create fair competition in the labour market.

3. The EAEU Treaty considers work experience for social security, but it lacks a dedicated chapter addressing the social security of workers. We assume it is a gap in the treaty. Although there is an entire section on labour migration consisting of three articles aimed at regulating labour activity, we believe that the existing norms are insufficient for comprehensive regulation of labour activity within the EAEU.

For example, there are currently problematic issues arising in law enforcement practice regarding the social security of children and family members of migrant workers. Migrants and their families face such problems as timely access to healthcare and education institutions.

Such problems exist in practice today. In addition, there are no official statistical data on migrants and family members from the EAEU who entered the Republic of Kazakhstan. Concerning the social security rights of migrant workers’ children and protection of the

31 EAEU Treaty (n 1) art 97, para 3.

32 ‘In the EAEU Countries, Recognition of Academic Degree Documents will be “Direct”’ (*Eurasian Economic Commission*, 17 March 2022) <<https://eec.eaeunion.org/news/v-stranakh-eaes-priznanie-dokumentov-ob-uchenykh-stepenyakh-budet-pryamym/>> accessed 11 May 2024.

rights of children who work at an early age in shadow employment, the following problem is identified at the international level.

On the first issue, according to Paragraph 5 of Article 97 of the EAEU Treaty, the children of migrant workers and citizens of the EAEU may stay in EAEU countries based on and for the duration of their parents' employment contracts. In this case, their migration registration is subject to renewal for the duration of the employment contract. Children of EAEU citizens have the right to attend kindergartens and schools free of charge. However, it is difficult to assess the scale of this phenomenon due to the lack of unified and systematic statistics on migrant children.

Data on the number of migrant workers and children living in Kazakhstan are unclear due to shortcomings in registration systems and irregular labour migration, according to the response of the International Organization for Migration (IOM) to the request of CABAR.asia. However, there are official data on the number of migrant children attending school. In the 2020-2021 academic year, according to the National Educational Database, 20,349 migrant children and 731 refugee children are studying at schools, and 93 migrant children are studying in the vocational education system. Among them, 81 are from KR, 6 from RA, and 16 from RB.³³

A significant issue is shadow migration involving underage employees within the EAEU. Children involved in the migration process are the most vulnerable category of migrants. Due to their age and especially in the absence of parental care, birth registration, or citizenship, they experience a greater risk of violence, labour exploitation and detention.

International law obliges states to respect and protect the rights of all children within their territory. As A.Bekmusa, head of UNICEF's child protection programs, emphasises, "Children who participate in migration processes, like all children, have the right to protection from all forms of violence, exploitation and abuse."³⁴ The best interests of the child must be considered in all decisions affecting migrant children, as migration is not always their choice.

A particular concern is the employment of bakchy girls in migrant families. Parents voluntarily send their underage daughters to work as bakchy.³⁵

Bakchy girls are often represented in families among Kyrgyz migrants, where they are hired to perform multiple duties, including childcare, cooking for the whole family, and cleaning, often with little.

33 Laura Kopzhassarova, 'Migrant Children in Kazakhstan are at Higher Risk' (*Central Asian Bureau for Analytical Reporting*, 18 August 2021) <<https://cabar.asia/en/migrant-children-in-kazakhstan-are-at-higher-risk>> accessed 11 May 2024.

34 *ibid.*

35 International Organization for Migration, *The Fragile Power of Migration: The Needs and Rights of Women and Girls from Tajikistan and Kyrgyzstan who are Affected by Migration, 2018: Summary Report* (IOM Publ 2018) 30.

As a rule, minors leave their home country to work as nannies for a year, during which they do not study but often continue to be registered in a school in Kyrgyzstan. Due to absences, such girls do not receive a full, high-quality education, depriving them of the opportunity to receive a professional education and find a good job, leading to further violations of their rights.

From this case, several violations of rights can be identified, including the right to work to an eight-hour working day, fair working conditions, fair working conditions and equal pay for work of equal value. Typically, migrant workers are at risk of delayed payment, underpayment and non-payment of wages. They may be forced to work long hours and weeks without days off, subjected to forced labour, and denied the right to miss work due to illness. Additionally, they are vulnerable and at risk of psychological violence, the humiliation of honour and dignity, and may experience sexual harassment and violence at work and in public places.

The right to work and freedom of employment are closely linked to the principle of abolishing forced labour. International labour standards developed by the UN and the ILO aimed at addressing the problem of slavery, forced or compulsory labour. The Home Work Convention No. 177 and Recommendation No. 184, adopted in 1996, will help to improve the situation of millions of home workers, most of whom are women. Convention No. 182 and Recommendation No.190, declaring the prohibition and elimination of the worst forms of child labour, also include a gender component, calling for special attention to the situation of working girls.³⁶

The problem under consideration prompts reflection and a search for solutions. Focusing on the issue, migration policy should include a comprehensive information campaign for migrants and their family members about the system of rights protection and residency regimes in destination countries, working in particular on the protection of migrants' rights with further expert support. A gender-sensitive approach should be applied in national programs and projects to protect the rights of migrant women and their families.

The migration effect will become evident with a significant reduction in the scale of illegal migration and a simultaneous increase in legal migration. It is necessary not only to tighten control over illegal immigrants but also to create a favourable climate for legalising illegal migrants by providing free state programs to enhance the qualifications of low-skilled legal migrants.³⁷

It is clear there is also a problem with the deportation of labour migrants due to shadow employment. Migrants who are deported often return to their homeland, change their

36 'ILO Conventions' (*International Labour Organization (ILO)*, 13 July 2011) <<https://www.ilo.org/resource/ilo-conventions>> accessed 11 May 2024.

37 Laura Dzhunisbekova and others, 'International Labour Migration: Concept and Modern Trends of its Development Within the Framework of EAEU' (2017) 20(3) *Journal of Legal, Ethical and Regulatory Issues* 1.

surnames to the maiden names of their mothers, or completely remove the surname altogether, leaving only their patronymics. This allows them to return to the EAEU countries where they were deported as seemingly different citizens.³⁸ To identify shadow employment within the EAEU, it is proposed to introduce verification of biometric data of migrant workers.

Today, the European Union, along with the United States, is one of the regions where significant flows of migrants are constantly directed. When attracting migrant workers, EU countries are guided by their economic interests and the needs of national labour markets. The EU has introduced a "Blue Card" for issuing work and residence permits to workers with the inclusion of their biometric data. The validity period of such a permit is strictly tied to the terms of the migrant's legal work contract. The most attractive is the experience of the United States using the Green Card, which plays a very significant role in the development of the economy and science, ensuring their competitiveness in the world.³⁹

In the EU, the provisions of the Stockholm Treaty are applied to protect security and exit from shadow employment, the priority of which, along with border protection and combating crime and illegal migration, is to create a more effective access channel for persons with legal status. In this regard, we are considering the possibility of applying the positive experience of the EU and the United States in granting permits, protection and unhindered promotion of migrant workers in the EAEU.

3 CONCLUSIONS

Harmonising labour legislation of the EAEU states is necessary; it should be operated not by unifying norms but by convergence based on the transformation theory. Based on the analysis of the situation of labour migrants in the EU and the EAEU, we consider it necessary to expand and improve the legal framework for protecting workers' rights. In this regard, within the EAEU, we believe it would be appropriate to change the requirement for labour migrants to increase the time spent in the country and exclude the deadline for renegotiating the contract, which in turn will help reduce the growth rate of illegal migrants. The Treaty should address the situation of third countries.

After analysing the provisions of the agreement on Labour Activities, we concluded that it is necessary to:

- extend the duration of stay within the EAEU.
- train EAEU citizens for the upcoming competitive digital environment.

38 Yakub Halimov, 'Tajikistan: Who and How Does "Business" on New Passports with Changed Surnames: Investigation of Radio Ozodi' (*Radio Ozodi*, 23 November 2021) <<https://rus.ozodi.org/a/31575126.html>> accessed 11 May 2024.

39 International Organization for Migration, *The Future of Migration: Building Capacities for Change: World Migration Report 2010* (IOM Publ 2010) 183.

- create unified requirements for member states to allow applicants for legal, medical, pedagogical and pharmaceutical education to travel and exchange practices.
- systematise issues and create a chapter in the EAEU treaty titled "Protection of labour rights and social security of workers".
- create strong and trustful relations between trade unions and employees in the EAEU.

The organised efforts of state bodies can significantly improve the maintenance of statistics on the number of migrant workers by specialisation, as well as provide data on accompanying family members. Such statistics can overcome the problem of accessing medical and educational institutions. Additionally, there is a pressing need to enhance protections for migrant children who are subjected to forced labour. It is proposed that a single Commissioner for Children's Rights be established within the EAEU.

REFERENCES

1. Dzhunisbekova L and others, 'International Labour Migration: Concept and Modern Trends of its Development Within the Framework of EAEU' (2017) 20(3) Journal of Legal, Ethical and Regulatory Issues 1.
2. Halimov Ya, 'Tajikistan: Who and How Does "Business" on New Passports with Changed Surnames: Investigation of Radio Ozodi' (*Radio Ozodi*, 23 November 2021) <<https://rus.ozodi.org/a/31575126.html>> accessed 11 May 2024.
3. Kenton W, 'Maastricht Treaty: Definition, Purpose, History, and Significance', *Investopedia* (New York, 31 July 2024) <<https://www.investopedia.com/terms/m/maastricht-treaty.asp>> accessed 11 May 2024.
4. Khassenov MKh, 'Grounds and Procedure for Termination of an Employment Contract on the Employer's Initiative in the Member States of the Eurasian Economic Union in the Context of International Labour Standards' (2022) 18(3) Journal of Foreign Legislation and Comparative Law 83, doi:10.12737/jflcl.2022.038.
5. Kopzhassarova L, 'Migrant Children in Kazakhstan are at Higher Risk' (*Central Asian Bureau for Analytical Reporting*, 18 August 2021) <<https://cabar.asia/en/migrant-children-in-kazakhstan-are-at-higher-risk>> accessed 11 May 2024.
6. Lyutov N, 'Conflict between the Fundamental Rights of Employees and Entrepreneurs in the Practice of the European Court of Justice' (2008) 12 Labour Law 70.
7. Lyutov N and Golovina S, 'Development of Labour Law in the EU and EAEU: How Comparable?' (2018) 6(2) Russian Law Journal 93.
8. Molchanovskaya A and others, *The Labour Market Kazakhstan 2022: On the Way to Digital Reality* (Labour Resources Development Center 2022).
9. Rakhimov K and Azizova A, 'Comparative Analysis of the EAEU and the EU Common Labour Markets' (2022) 22(1) Vestnik RUDN, International Relations 94, doi:10.22363/2313-0660-2022-22-1-94-110.

10. The number of unemployed in the EAEU decreased by 13.8% <<https://eec.eaeunion.org/news/chislennost-bezrobotnykh-v-eaes-sokratilas-na-13-8/>> accessed 11 July 2024.
11. Thompson L, 'Protection of Migrants' Rights and State Sovereignty' (2013) 50(3) UN Chronicle 8, doi:10.18356/57e51f0e-en.
12. Trachtman JP, 'Is Migration a Coherent Field of International Law? The Example of Labour Migration' (2017) 111 AJIL Unbound 481, doi:10.1017/aju.2018.1.
13. Wagle UR, 'Labour Migration, Remittances, and the Economy in the Gulf Cooperation Council Region' (2024) 12(1) Comparative Migration Studies 30, doi:10.1186/s40878-024-00390-3.
14. Weber E, "'Work Without Borders" or How to Find Work in the EAEU Countries' (*DKN World News*, 19 July 2021) <<https://dknews.kz/ru/eksklyuziv-dk/193459-rabota-bez-granic-ili-kak-nayti-rabotu-v-stranah-eaes>> accessed 11 May 2024.

AUTHORS INFORMATION

Mereke Zhurunova

Doctoral student at Maksut Narikbayev University, Republic of Kazakhstan, Senior Lecturer at the Higher School of Law of Astana International University of Astana, Republic of Kazakhstan

m_zhurunova@kazguu.kz

<https://orcid.org/0000-0001-6020-5823>

Corresponding author, responsible for writing, reviewing and editing of this article.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Оглядова стаття

ПИТАННЯ ЗАБЕЗПЕЧЕННЯ ГАРАНТІЙ ТА СОЦІАЛЬНОГО ЗАХИСТУ ТРУДОВИХ МІГРАНТІВ ЄАЕС

Мереке Журунова

АНОТАЦІЯ

Вступ. На сьогодні Євразійський економічний союз (далі — ЄАЕС) сформував власний ринок праці; однак в сучасних міжнародних умовах залишаються невирішеними питання, пов'язані із забезпеченням охорони здоров'я мігрантів та їх доступу до працевлаштування. Незважаючи на постійні зусилля в межах ЄАЕС щодо розвитку та поглиблення євразійської інтеграції й удосконалення нормативно-правової бази, в епоху цифровізації є потреба розвивати кращий доступ працівників до систем соціального захисту та медичного забезпечення.

Актуальність цієї наукової статті полягає в існуванні проблемних питань, пов'язаних із тим, що багато мігрантів не зареєстровані та не мають документів, які б захищали їх юридично та фінансово; ця ситуація сприяє розвитку неформальної зайнятості та низької продуктивності праці. Хоча країни ЄАЕС встановили робочі та соціально-економічні умови, питання забезпечення охорони здоров'я, доступу до праці та соціального захисту трудових мігрантів залишаються невирішеними.

Методи. У цій статті застосовано різні методи наукового пізнання, зокрема історико-правовий аналіз, порівняльно-правове дослідження, індукцію та дедукцію, а також аналіз і синтез. У цій роботі також застосовуються акти та нормативні документи МОП.

Яка роль захисту соціально-економічних і трудових прав працівників-мігрантів як основного завдання приймаючих держав?

Наскільки в правозастосовній практиці положення міжнародних угод щодо організованого найму працівників між приймаючими країнами та країнами походження мігрантів забезпечують адаптацію мігрантів до правового режиму країни перебування, участь мігрантів у функціонуванні інститутів громадянського суспільства та моніторинг міграційних процесів?

Як національне регулювання трудової міграції в інтеграційних об'єднаннях держав раціонально організовує їхні дії на основі принципів національного режиму для трудових мігрантів?

Трудова міграція зміцнює інтеграційні об'єднання завдяки тому, що створює міцні соціальні зв'язки та розвиває інститути громадянського суспільства в межах інтеграційних об'єднань. Оскільки державний суверенітет нерозривно пов'язаний із захистом інтересів співгромадян у регулюванні трудової міграції, усі держави, що беруть участь у регіональній інтеграції, повинні не лише захищати права трудових мігрантів, а й забезпечувати всі умови для того, щоб мігранти виконували свої зобов'язання перед громадянським суспільством.

У дослідженні розглядалося вільне пересування та забезпечення трудових і соціальних гарантій працівників-мігрантів в ЄАЕС та порівнювалося їхнє становище з аналогічним в ЄС. Також було проведено опитування трудових мігрантів в ЄАЕС, зокрема серед працівників в галузі освіти, медицини та різних приватних секторів. Ця стаття ґрунтується на результатах цього дослідження.

У статті проаналізовано проблеми надання гарантій та соціального захисту трудовим мігрантам ЄАЕС. Було запропоновано вдосконалити правові регуляторні механізми та окреслено рекомендації щодо покращення та розширення можливостей для вільного пересування, що допоможе забезпечити кращий захист соціальних та трудових прав мігрантів у ЄАЕС. Основними завданнями дослідження були:

- Вивчення положень Конвенції МОП про працівників-мігрантів.
- Збір та аналіз даних про трудову міграцію в межах ЄАЕС.
- Аналіз міжнародних договорів ЄС щодо правового статусу трудових мігрантів.
- Проведення опитування трудових мігрантів у ЄАЕС щодо питань забезпечення їхніх прав та гарантій за Договором про ЄАЕС.

Результати та висновки. Це дослідження підкреслює необхідність організації безпечної трудової міграції, надання трудовим мігрантам повного доступу до цифрових послуг, вдосконалення системи професійно-технічної освіти відповідно до потреб ринку праці, а також розробки та впровадження єдиної системи для забезпечення захисту працівників та їхніх сімей. Успішна адаптація в країні перебування визначається як критичний фактор як для трудових мігрантів, так і для їхніх сімей.

Автори рекомендують додати до договору про ЄАЕС окремий розділ, який би комплексно розглядав трудові та соціальні права, а також їхні гарантії.

Ключові слова: Євразійський економічний союз, ЄАЕС, Договір про ЄАЕС, працівники ЄАЕС, Європейський Союз, ЄС, Хартія основних прав людини, трудова міграція, інтеграція, гармонізація, уніфікація.